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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES

FILE: B-206459

DATE: June 28, 1982

MATTER OF: Syndex Recovery Systems, Inc.

DIGEST:

Late telegraphic offer received by Air Force prior to the closing time for receipt of offers, but time/date stamped the following day, for unexplained reasons, should have been considered since telegram was in the control of the Government and failure to deliver it to the appropriate office was mishandling attributed solely to the Government.

Syndex Recovery Systems, Inc. (Syndex) protests the Department of the Air Force's (Air Force) rejection of its offer as late and the award of a contract to Irvin Industries, Inc. (Irvin), under request for proposals (RFP) No. FD2040-82-50078D-1, for the acquisition of F-111 stabilization brake parachutes. We agree with Syndex's position and sustain the protest.

The closing date for receipt of proposals was January 26, 1982, at 4:15 p.m., P.s.t. Syndex advises that it contacted Western Union Telegraph Company (Western Union) to send a telegraphic offer to the Air Force on January 26 and that its message was accepted by Western Union and ready for transmission at 10:37 a.m., e.s.t. (which is 7:37 a.m., P.s.t.). Furthermore, Syndex contends that its telegraphic offer was received by the Air Force at the Sacramento Air Logistics Center PM/TWX room at 11 a.m., e.s.t. In support of this contention, Syndex has submitted a Western Union Statistical Retrieval Notice and an affidavit from the Area Manager, Administration, for the Los Angeles Area Office of Western Union.

The Air Force contends that the Snyder offer could not be accepted since it was stamped in at the PM/TWX room on January 27 at 7:37 a.m., P.s.t., and there was

no Government mishandling. The Air Force, citing RFP clause L-35 (Late Proposal, Modifications of Proposals and Withdrawals of Proposals), Defense Acquisition Regulation § 7-2002.4 (Defense Acquisition Circular No. 76-18, March 12, 1979), submits that the only acceptable documentary evidence of receipt of Syndex's offer that our Office can use is the time/date stamp of the installation or other documentary evidence of receipt maintained at the installation. Moreover, the Air Force questions the alleged 11 a.m. receipt time since the TWX machine was not in operation on January 26 from 8 to 11:45 a.m., P.s.t., due to a malfunction. Concomitantly, the Air Force posits that when a Western Union representative from the Reno Customer Service Office was presented with this information, there was no explanation for the conflicts.

We note from the contracting officer's (CO) statement that he was initially made aware of the TWX malfunction at 8:30 a.m., P.s.t., when Irvin called to complain that its modification was not being accepted by the TWX machine. This was verified by the CO when he called the PM/TWX room and was told that the computer service mechanic was notified of the problem and on his way to fix the machine. The CO also states that Irvin advised him at 2:37 p.m., P.s.t., that the TWX machine accepted its modification. Furthermore, the Air Force described the procedures followed by the PM/TWX room personnel after receipt of messages (offers) as follows:

"The messages are cut up then date and time stamped. The messages are then distributed to the proper destination with one copy for our files. Then the secretaries distribute the messages from there. This procedure is done four times a day, at * * * [7:30, 9:40, 12:30 and 2:30]."

A review of the Syndex telegram, supplied to our Office by the Air Force, discloses that it contains the procuring activity's answer back or acknowledgment (SMAMA PROC SAC) at 1100, e.s.t. Irvin's modification telegram contains the same letter notation. This information, which is "other documentary evidence of receipt maintained by an installation" in addition to the time/date stamp authorized by clause L-35, above,

in conjunction with the statistical retrieval notice, supports the Syndex position that its telegram was received in the PM/TWX room at 1100, e.s.t.

As Western Union's Area Manager explains in his affidavit, the statistical retrieval notice is one of "Western Union's several methods for verifying the actual delivery of previously filed messages." The method used to obtain the notice "involves querying the computer as to its record of handling the message in question." Once queried, the computer will search its memory for the message ledger number and, then, automatically produce the desired data. In addition, he advises that he examined a copy of the confirmation telegram, which included the text of Syndex's telegraphic offer, sent by Western Union to Syndex and a copy of the statistical retrieval notice. In regards to the telegram, he advises that it is "a typical mailgram message confirmation of the sort that Western Union employs to confirm messages that are telephoned in to [it] by customers." He also states that the message indicates that it was accepted on January 26 by Western Union at 10:37 a.m., e.s.t., for transmission to Sacramento. With respect to the statistical retrieval notice, he confirms that it relates to the confirmation telegram. Furthermore, he states that "the Syndex message was actually delivered to the TWX machine at the Sacramento Air Logistics Center at 11 a.m. on January 26, 1982."

While we cannot explain what occurred in the PM/TWX room at the time Syndex's offer was received or the reason why the TWX machine initially rejected Irvin's offer but accepted Syndex's offer or why it was time/date stamped the following day, over 20 hours after receipt, the telegram clearly indicates that it was received by the Air Force TWX machine at 11 a.m. Therefore, the telegram was in the possession of the Government with sufficient time for delivery to the appropriate office prior to the closing time. For purposes of the late bid and modification rules, it was in the control of the Government. The Air Force's failure to deliver the telegram is mishandling attributed solely to the Government. See Monaco Enterprises, Inc., B-205031, March 4, 1982, 82-1 CPD 197; B-155247, December 21, 1964.

Accordingly, the Air Force should have accepted Syndex's proposal. Since the contract has already been performed, it is inappropriate to recommend corrective action. However, we have, by separate letter, advised the Secretary of the Air Force of this situation in an effort to preclude this from recurring in the future.

Harold R. Chi-Chi
for Comptroller General
of the United States